

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

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Telephone Number:

Refer Reply To:

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PLR-148263-07

Date: APRIL 08, 2008

Legend:

Wife =

Husband =

Date 1 =

Trust =

Daughter =

Attorney 1 =

Law Firm =

Company =

a =

b =

Year 1 =

Date 2 =

Attorney 2 =

Date 3 =

Year 2 =

Date 4 =

Date 5 =

Dear :

This is in response to a letter from your authorized representative dated October 22, 2007, and subsequent submissions, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Husband's generation-skipping transfer (GST) exemptions to a transfer to Trust.

The facts and representations submitted are summarized as follows: On Date 1, Husband and Wife established an irrevocable trust (Trust) for the benefit of their Daughter and her children. The trust agreement was drafted by Husband and Wife's estate planner, Attorney 1 in Law Firm, to hold Husband and Wife's stock in Company, an operating company, in a manner that would maintain Company's status as a subchapter S Corporation. Attorney was named as trustee of Trust.

Also on Date 1, Husband and Wife transferred to Trust their community property interests in a shares of Company common stock, which represented b percent of the total outstanding shares of Company. The other owners of Company are not related to Husband and Wife.

Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns were not filed to report the transfer to Trust and to allocate Husband and Wife's GST exemptions to the transfer. Husband and Wife relied solely on Attorney 1 for all tax advice and estate planning from their initial meeting in Year 1 until Attorney's death on Date 2. Daughter attended every meeting Attorney 1 held with Husband and Wife.

Wife died on Date 3. Husband hired Attorney 2 as Husband's attorney; and Daughter, as independent executor of Wife's estate, hired Attorney 2 to represent the estate. Early in Year 2, while preparing the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for Wife's estate, Attorney 2 discovered that no gift tax returns had been filed to report the Year 1 transfers to Trust and to allocate GST exemption to those transfers. In affidavits, Daughter states that none of Husband and Wife's tax advisors from Year 1 until the time Attorney 2 discovered the failure to file the return had mentioned or discussed the requirement to file a gift tax return or the need to allocate GST exemption to the Trust.

Husband died on Date 4. Daughter was appointed independent executor for his estate and hired Attorney 2 as the attorney representing the estate.

Attorney 2 prepared Forms 709 reporting Husband and Wife's Date 1 transfers to Trust and filed these Forms 709 on or about Date 5. On each Form 709, the respective taxpayer's GST exemption is allocated, using a formula allocation, to the reported value of the taxpayer's community property interest in the transferred shares of Company stock. An attachment to each Form 709 states that the taxpayer is seeking 9100 relief to make this allocation and that this allocation is contingent upon the taxpayer receiving

the relief. A copy of the ruling request is also attached to each Form 709.

Husband's estate requests an extension of time under § 2642(g) and § 301.9100-3 to make a retroactive allocation of Husband's available GST exemption to the Date 1 transfer to Trust of his community property interest in Company stock, based on the gift tax value of such stock on Date 1.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) (in effect at the time of the transfer) provides that, for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides, in relevant part, that if the allocation of the GST exemption to any transfers of property is made on a timely filed gift tax return or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of determining the inclusion ratio shall be its value as finally determined for gift tax purposes and such allocation shall be effective on and after the date of such transfer.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent

contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Section 2652(a)(2) and § 26.2652-1(a)(4) provide that, if, under section 2513, one-half of a gift is treated as made by an individual and one-half is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under section 2513.

Notice 2001-50, 2001-34 I.R.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute. The Notice further provides that Wife may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, Wife may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Husband's estate is granted an extension of time of 60 days from the date of this letter to allocate Husband's available GST exemption to the Date 1 transfer to Trust of his community property interest in Company stock, based on the gift tax value of such stock on Date 1.

The allocation should be made on supplemental Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return for the year in which the Date 1 transfer was made, and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to each supplemental Form 709. A copy is enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by Husband's estate and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically we are not ruling on whether Trust will have a zero inclusion ratio as a result of the allocation of Husband's GST exemption to the Date 1 transfer to the trust.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter